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IN THE
UNITED STATES SUPREME COURT,

OCTOBER TERM, 1923.

No. 185.

THE JOHN E. THROPP'S SONS COMPANY,

Petitioner,

v.

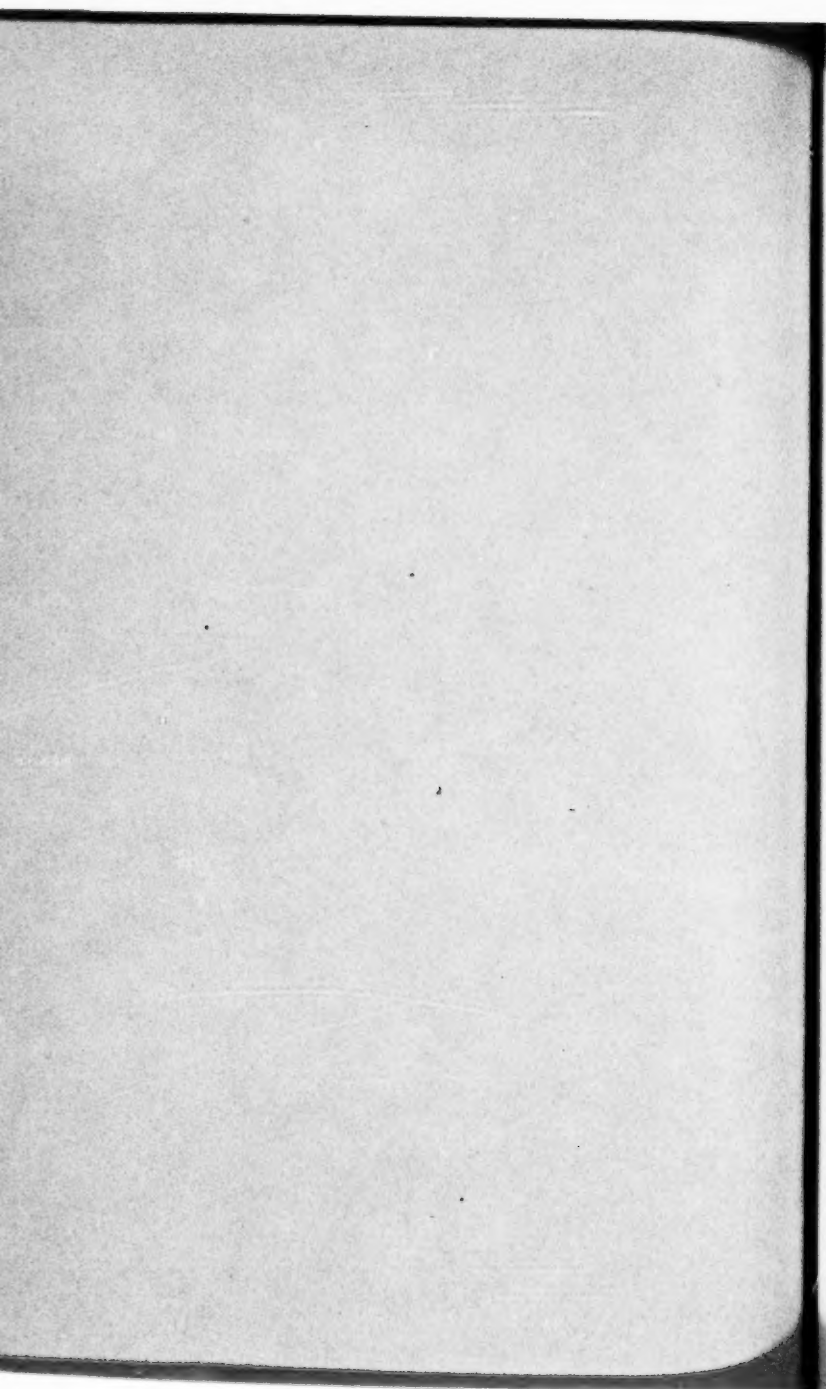
FRANK A. SEIBERLING,

Respondent.

REPLY BRIEF FOR PETITIONER.

LIVINGSTON GIFFORD,
E. CLARKSON SEWARD,
THOMAS G. HAIGHT,

Counsel for Petitioner.



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Petitioner-Defendant,

v.

FRANK A. SEIBERLING,
Respondent-Plaintiff.

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REPLY BRIEF FOR PETITIONER.

Plaintiff's contention that the hand spinning method differs from the State machine method is (1) not supported by the record, (2) forms no part of his patent, and (3) is not in line with Judge Buffington's findings.

I.

Plaintiff devotes many pages in the effort to show that the hand spinning method was in the so-called "single stretch" class, but *he is unable to point out a single witness who said this*. Therefore, Plaintiff arbitrarily fixes the figure of 17 per cent. circumferential stretch as separating the single stretch class from the double stretch class (Opp. Brief, p. 13). He says that circumferential stretch of 17 per cent. or more indicates the single stretch method. On page 19, opposing brief cites the wit-

nesses Walch and Duncan in support of Plaintiff's contention that the hand spinning was in the single stretch class and, hence, had more than 17 per cent. circumferential stretch; but Plaintiff fails to note that Walch testified that the circumferential stretch in hand spinning was only *6 per cent.* (Vol. I, p. 291) and that Duncan said that *12 per cent.* was about as much as the ordinary hand worker would pull (Vol. I, p. 197). Thus, the two witnesses relied upon by Plaintiff put the hand spinning, by Plaintiff's own criterion, in the *double stretch* class. Furthermore, Duncan explains the changes in the angle of the fabric threads on the head and side portions, which Plaintiff says is characteristic of the double stretch method, as being produced in the hand spinning (Vol. I, p. 198). Heller testified to *1 1/4 per cent.* stretch in hand spinning at the Diamond plant (Vol. I, p. 124), also within Plaintiff's definition of the double stretch method. Drach testified that he got more stretch by hand spinning than by Plaintiff's so-called "saw tooth" method, which Plaintiff says brings about the double stretch (Vol. I, p. 105). It should be emphasized that opposing brief, at the bottom of page 25 and top of page 26, says that Walch was unable to give or even estimate the amount of circumferential stretch, in spite of the fact that this witness accurately gave this as 6 per cent. (Vol. I, p. 291). At this place also, Plaintiff again quotes from Duncan without noting his statement that 12 per cent. was as much as the ordinary workman would pull (Vol. I, p. 197). As mentioned in our main brief (p. 102), the exhibit tires made by Plaintiff's witness Mackey, by the hand spinning process for the purpose of this case, show the radial stretch, and, therefore, demonstrate the presence

of the double stretch method. Opposing brief (pp. 71, 72) contends that the only radial stretch shown in these exhibits is in the bead portion which, it is said, Mackey did not spin down. But the evidence is that this spinning at the bead portion was done at the Goodyear plant by hand spinning (Vol. I, p. 234), and it is, of course, immaterial whether the spinning was done by Mackey or someone else.

II.

The State patent itself says absolutely nothing about single stretch or double stretch. It nowhere mentions circumferential stretch, although it refers to tension, and it nowhere refers to any radial stretch whatever. Plaintiff's expert admits this, saying (Vol. I, p. 513) :

"I do not recall any place in the State patent which refers to radial stretch."

It describes the tension means used in resisting the circumferential application of the fabric to the core as being regulatable at will (Pat. p. 2, line 121), and *there is nothing in the patent specification to tell the workman that he should adjust this so as to make the machine operate according to either the single or double stretch methods*. If the machine is adjustable for one method, it is equally adjustable for the other, and opposing brief (p. 11) says that both these methods were well known. Of course, it is the law, as asserted on page 104, *et seq.*, of opposing brief that it is not necessary for a patent to set forth the theory of its operation, provided the patent gives such definite instructions that any one following the instructions will get

the intended result. But this does not support Plaintiff's contention that the State patent is for the double stretch method, because the specification of that patent does not instruct one to follow the double stretch rather than the single stretch method and does not give any instruction which would necessarily result in the double stretch.

Finally, the State patent makes particular reference to a hand held spinning roll (Pat. p. 5, line 113), and merely says that the machine work is "more rapid and more even". *It does not suggest that there was any difference in the methods*, and its silence on this point implies the contrary. To the same effect is the testimony of State given in rebuttal, since he says that a man by the name of McDonald demonstrated to him the hand spinning method and that it constituted a part of the experiments carried on in producing his machine (Vol. I, p. 309). At the time of this testimony, all Defendant's evidence with respect to hand spinning had been taken, so that State was clearly called upon to differentiate this hand spinning method from his machine method, if there was any difference.

III.

This position of Plaintiff is not in line with the findings of Judge Buflington, because he said in his opinion below (Vol. II, p. 404), as quoted on page 92 of our main brief:

"we note the fact that tires embodying these two features of *double stretch* and *roll-spinning* fastening were, before the patent to State here in question, *hand made*." (Italics ours.)

thus holding directly contrary to Plaintiff.

The distinction between the hand spinning method and the State machine method, found by the Court below was that, in the machine method, the core was rotated so rapidly that the *fabric automatically stretched itself radially*, so that all the spinning rolls had to do was to *plaster* the centrifugally radically stretched fabric edges upon the sides of the core. Numerous quotations from the opinion to this effect are given on pages 37 and 38 of our main brief. **Plaintiff's brief says not a word to support this position of the Court below**, thereby strongly corroborating our submission that this holding of Judge Buflington is groundless and that the three professors of mechanical engineering who made affidavits on Petition for Rehearing were right. Indeed, Plaintiff goes so far as to say, on page 92 of his brief:

"Judge Buflington may or may not have ascribed too much power to that force;" [centrifugal force].

Plaintiff goes on to argue that it is the combination of the fabric edges thrown out by centrifugal force and the inwardly moving spinning roll which produces the radial stretch. But in this argument *he runs foul of the prior hand spinning* because, as mentioned in our main brief (p. 90), the witnesses testified that, in the high speed rotation of the core used in hand spinning, the edges of the fabric were caused to stand straight out, and that the spinning roll was moved radially inwardly against the outstanding fabric. That this produced radial stretch has been shown by the evidence mentioned in Chapter I, *supra*.

Therefore, we have the condition where the record evidence clearly shows, and the *Court below finds*,

that the hand spinning made tires according to the double stretch method. While agreeing to this, Judge Buffington says that the machine process differs because its high speed rotation of the core generated *centrifugal force* which caused the fabric to *stretch itself* radially. This would be a distinction if it were a fact; but in this Judge Buffington was mistaken, as we have shown in our main brief, and as the three professors have stated in their affidavits. **Plaintiff knows that Judge Buffington was mistaken and cannot, therefore, support the Judge's position in his brief.** Therefore, Plaintiff is forced to revert to his old argument that the hand spinning did not have any radial stretch at all, which argument, as demonstrated, is not supported by the record and is overthrown by the findings of the Court below. We need only add that, as mentioned in our main brief (p. 88), the Court of Appeals for the Sixth Circuit held that the hand spinning was "identical" with the method of the State machine, and that Court had the benefit of seeing both operations performed. The same finding of fact was made by the District Court of New Jersey.

Double Stretch.

Plaintiff accentuates this subject so much that we must emphasize the following facts.

I.

Double stretch is no part of the State patent. It is neither the described nor the necessary operation of the machine described therein (see pp. 2, 3, *supra*).

II.

Double stretch is no part of Defendant's operation or the necessary result of Defendant's machine (see our main brief, pp. 147, 148, and this reply brief, *infra*).

III.

Double stretch was old in the hand spinning process (see pp. 1 and 2, *supra*).

IV.

Double stretch was old in the Belgian machine and the Seiberling and Stevens machine (see our main brief, pp. 32, 106, 107, 124, 127, 128, 129).

Specific Criticisms of Hand Spinning.

On page 27 of opposing brief, it is stated that Defendant's witnesses agree that the hand spinning was used "entirely" in the production of small tires and that the larger tires had to be made by a different method. This is inaccurate. Duncan testifies that hand spinning was used at the Hood plant from 1906 to 1918 on tires as large as five and one-half inches in cross section, which is a very large size (Vol. I, p. 203). Mell testifies that this same method was used at the Republic plant for years on tires as large as five inches (Vol. I, p. 155), and Walch gives testimony to the same effect as to the operations at the Ajax Company (Vol. I, p. 289).

On pages 30, 31 of opposing brief, it is said that high, uniform core speed is an "absolute requirement" to secure radial stretch. This is inaccurate. Even Plaintiff's expert would not assert it. He was asked whether, if the core were rotated at a very

low speed of only 6 to 12 revolutions per minute, there would be the rearrangement of the fabric cords referred to as radial stretch, and he said (Vol. I, p. 66) :

“I do not feel that I am at present qualified to answer this question. I have not investigated the effects of attempting to form the fabric with the core rotating at slow speed sufficiently to enable me to express a definite opinion with regard thereto.”

The Court of Appeals for the Sixth Circuit said (see Appendix to our main brief, p. 23) :

“Perfectly successful spinning performed in Court upon a slowly revolving core, demonstrates that the outlying skirts are not essential.”

Under the heading “Core Speed Too Slow in Hand Spinning”, Plaintiff’s brief endeavors to make it appear (pp. 33, 34) that the hand spinning speed was lower than the spinning speed used by Defendant. For this purpose, Plaintiff’s brief takes the maximum hand spinning speed at 50 to 60 R. P. M. This is erroneous. On the contrary, we have shown in our main brief (pp. 99, 100) that there is no difference between the old hand spinning speed and Defendant’s, which is between 120 and 130 R. P. M.

Moreover, it certainly can make no difference what the number of revolutions were per minute so long as the speed was fast enough to make the flaps stand out under centrifugal force, and we have shown at page 90 of our main brief the overwhelming and uncontradicted evidence that the flaps did stand out in hand spinning.

Plaintiff’s expert Browne, did not say that 80 to 120 R. P. M. was the “minimum requirement”, as

stated on page 34 of opposing brief. He stated that the fabric was thrown out to an appreciable extent at 50 R. P. M. on a medium size core (Vol. I, p. 64, x-Q. 84); and he refused to state within 45 degrees at what angle the fabric must be thrown out before, as he alleged, it usefully cooperated with the spinning rolls (Vol. I, p. 69).

On page 34 of opposing brief, the speed of 50 to 60 R. P. M. stated as given by Roe, had reference to that form of hand spinning in which the core was continuously rotated by one hand. It did not refer to that form in which the core was given a high speed rotation and allowed to run under its own momentum.

On page 38 of opposing brief, it is stated that hand spinning was finally abandoned altogether. This is an important inaccuracy. Only one witness referred to a change as being made, and that was at only one factory, and in the late year 1910. Furthermore, he says that the process was only changed on that part of the work *over the top* of the bead (Vol. I, p. 104). The evidence shows that this process was continued by the following concerns: Goodrich Company, Firestone Company, Republic Company, McGraw Company, Miller Company, Ajax Company, Empire Company, Batavia Company and Hood Company (Vol. I, pp. 136, 137, 138, 153, 154, 155, 169, 127, 286, 287, 294, 295).

State's Deposition.

This deposition of the alleged inventor of the patent in suit, to which Plaintiff devotes pages 44 to 56 of his brief, is entirely uncorroborated, although State testifies that there were four other men working with him at the time, so that corroboration should have been ready at hand. Under

the authorities, this testimony should, therefore, be accepted with the greatest caution, if not rejected as supporting Plaintiff's case. *Clark v. Williamantic*, 140 U. S. 486, 491; *Mergenthaler v. Scudder*, 11 App. D. C. 264; *Winslow v. Austin*, 14 App. D. C. 137; *Garrels v. Freeman*, 21 App. D. C. 207; *Kitchen v. Smith*, 39 App. D. C. 500.

The object of Plaintiff's brief in devoting so much space to the uncorroborated testimony of State seems to be to gain some advantage for the alleged invention here in controversy from the length of time that State took in arriving at his machine. It might be entitled to this importance if this Defendant were infringing the whole or any considerable number of the features of the State machine, but it loses all importance in view of the fact that there is no pretense that Defendant is infringing the State machine in general, and there is substantially nothing in State's testimony showing that any considerable experiment or effort was required in arriving at the particular features which Defendant is alleged to infringe.

State's story is that he started in June, 1907 (Vol. I, p. 336) and, within two or three months he had developed and built substantially the whole machine shown in his patent. By July or August he had completed the entire structure shown in sketch No. 11 (Vol. II, p. 89), and was producing good tires thereon (Vol. I, p. 362). There are 15 claims in the patent which Defendant is not charged with infringing, and there are obviously many mechanical details of the machine, not claimed, which took time for designing, selecting and building. A few months was certainly a very short time within which to build a machine of this character, without the necessity of making any important inventions whatever, and does not consti-

tute any proper ground for the argument Plaintiff makes that there was great difficulty in making any inventions embodied in it.

Much less is the time devoted to building this machine by State any evidence that any of the features which it is supposed to contain in common with Defendant's machine, were matters of difficulty. They might have been perfectly obvious to a man skilled in the art and yet the length of time in building the machine would have been nothing unusual.

Moreover, it does not appear that, while State was building this machine, he had the benefit of the knowledge of the prior art which is shown in this record. In fact, it appears that prior to building this machine, State's experience was confined practically to the Goodyear factory.

Plaintiff's Refusal to Operate His Reproduction of State's Patented Machine.

At the bottom of page 58, opposing brief excuses the refusal to demonstrate this machine to Defendant's counsel and expert on the ground that, at the time such demonstration was requested by Defendant's counsel, "the machine had already been dismantled and placed in the storage warehouse". Opposing counsel inadvertently overlooks the fact that such demonstration was first requested on the record very much earlier in the case (Vol. I, p. 172).

Commercial Success.

On page 64, opposing brief emphasizes an alleged error in our brief, by saying that the license agreements in the record do not mention the Seiberling

& Stevens patent, in addition to the patent in suit. This does not cover the case, because the license agreements printed in the record are supplemental agreements, which continue in force the original agreements at greatly reduced rates and under certain conditions, and Seiberling admits in his testimony that the licenses were granted and royalties paid under the broad Seiberling & Stevens patent in addition to the patent in suit (Vol. I, p. 404).

See also pages 10 to 12 and 43 to 44 of our main brief.

Alleged Automatic Operation of State Machine.

An effort seems to pervade Plaintiff's brief to give the erroneous impression that State produced an automatic tire making machine. Nothing could be further from the fact, even if we consider only the so-called prior art hand spinning operation. In this old hand operation, State found the core exactly as he uses it. He found the hands being used to hold back on the fabric for giving the longitudinal stretch and he merely substituted a pair of ordinary rollers, instead of the hands, for performing exactly the same function. He found the spinning wheels held by the hands and he merely introduced a hand moved mechanical support to assist the operator in putting the old spinning wheels through their old motion for performing their old function. The opinion of the Sixth Court of Appeals stated the facts in regard to the State machine correctly (p. 12, Appendix of Defendant's brief) and concluded as follows:

"In each instance, the time during which and the pressure with which the tool was to be applied (except for certain spring pressure) was regulated by the operator's hand. In no instance did the machine do anything except

to keep the core revolving. The fact that the tools were mounted on a revolving table, which table was mounted on the frame of the machine, cannot be important. From the standpoint of an interdependent combination, the situation is the same as if these four tools had been lying upon a work-bench by the side of the operator and he had successively selected the ones he desired. While this is obvious, it is emphasized by the fact, clearly appearing, that operators using the State machine often discard the spinning tool mounted on the turret, and, after the tread is formed, spin the sides down by hand."

This subject has been quite fully covered in our main brief, but attention should be directed to the statement of opposing brief on page 90 that the spinning rolls are pressed to their work by springs that "exert a pre-regulated uniform pressure". This is repeated, in substance, at other places. This is quite inaccurate since, as Plaintiff's expert Browne admits, the pressure of the spring cannot be uniform, because it varies throughout the operation on any given core and for different sizes of cores (Vol. I, p. 63, x-Q. 78; p. 64, x-Q. 82).

Infringement.

On page 117, opposing brief says, "There is the admission by Defendant's expert that it [Defendant's machine] comprises mechanism for performing the double stretch method". This is erroneous. Defendant's expert maintained that Defendant's machine operated on the single stretch method only (Vol. I, p. 278, Q. 64). Plaintiff's assertion can only be accurate to the extent of saying that Defendant's expert admits that Defendant's machine comprises mechanism which *Plaintiff contends* would perform the double stretch method.

The illustrations bound in between pages 116 and 117 of opposing brief are quite inaccurate. The part colored in blue under the heading "State's Machine", *is not in the State patent*, nor is there any equivalent of it in the patent. It was incorporated later in commercial machines in order to give means for imparting *manual* lateral pressure to the yellow arms carrying the spinning rolls, in addition to the yielding pressure of the springs, **which arrangement was embodied in defendant's machine and patented in defendant's patent.** See, for instance, claim 37 of defendant's patent 1,119,326 (Vol. 2, p. 48), put in evidence by *Plaintiff*, which reads as follows:

"37. A machine of the character described comprising a core upon which a tire may be built, means for stretching tire material onto the periphery of the core, mechanism adapted to pass radially across the core for forming the material on the sides thereof, *automatic means for holding said mechanism laterally against the core, and means for varying said lateral pressure at will.*" (Italics ours.)

As Plaintiff construes and here illustrates his State patent, it is a direct infringement of this claim granted by the Patent Office to the patentees of Defendants patent in spite of the careful consideration of the prior State patent. The "automatic means for holding said mechanism against the core" is the green springs, and the "means for varying said lateral pressure at will" is the blue pivoted lever with its slots engaging the yellow arms of the spinning rolls.

The injection of this blue element is *wholly unauthorized* if this illustration is intended to represent the patent in suit, and it must be so intended

because Plaintiff is here discussing infringement. The question of infringement cannot be determined by comparing Defendant's machine with Plaintiff's commercial machine. The comparison must be between Defendant's machine and Plaintiff's *patent*. This point is regarded as of much importance because of the effect that these misleading illustrations are calculated to have.

Furthermore, Plaintiff shows two springs (green) on each spinning roll arm, one a leaf spring and one a coil spring. There is no showing in the patent of two springs on each arm.

Again, the main views show the spinning rolls operating upon the tread portion of the tire and the little views show the spinning rolls operating at the edges of the tread portion. But the Disclaimer has now limited all the claims to the operation of the recited elements "beyond the tread portion" and, as Plaintiff's expert Browne admits, when Defendant's spinning rolls are in this position, they are operating at right angles to the plane of the core (Vol. I, p. 73). This position is shown in the cut on page 151 of our main brief, and the result of this operative position is that there is, as testified by Waterman (Vol. I, p. 278, Q. 64), no radial stretch in the normal operation of Defendant's machine.

None of the quotations from Defendant's patent, presented on page 129 of opposing brief, says anything about radial stretch. They emphasize the circumferential stretch, but they merely say that the sides are *formed* by the rolls. Thus, there is not only silence as to radial stretch, but there is implied negation thereof by the apposition of the word "formed", when referring to the side portions,

to the word "stretched", when referring to the tread portion.

The point is just this. Plaintiff has a patented machine which can be equally well used for either the single stretch or double stretch method. The specification gives no directions as to either method. Therefore, he cannot prove infringement by showing that Defendant's machine has elements which can be used for the double stretch method, so long as the said elements can also be used for the single stretch method. The vice of the matter lies in Plaintiff's endeavor to save his machine patent by construing it as for a particular method—but this situation rests wholly upon Plaintiff's shoulders. Opposing brief lays emphasis (p. 126) upon the testimony of Curtis that one of the Thropp Companies was "using about 12 per cent. [circumferential stretch] as a standard now"; but this is loose language, because the Thropp Companies do not *use* the machines, they only manufacture them; and the testimony, by the use of the word "now" referred to the year 1919, when the testimony was taken (Vol. 1, p. 285), which was five years *after* the Bill of Complaint was filed. Furthermore, the very next question and answer of the witness is as follows (Vol. 1, p. 300).

"X-Q. 67. What is the general stretch that is used by Thropp machine users?

"A. It varies in different factories. Each one has their own idea in regard to stretch. It varies from what I hear Mr. Walsh say up to about *eighteen* or *twenty* per cent. In fact he is the first one that I heard say they stretch six per cent. That is very little stretch. It runs to about *eighteen* or *twenty per cent.*; some places use *eighteen* per cent." (Italics ours.)

Plaintiff has not proved that Defendant made, sold, or used, prior to the filing of the Bill, a machine which made tires by the double stretch method, and this he must have proved, under his own present construction of his patent, in order to establish infringement, under the unquestionable rule that infringement is a tort and must be proved by Plaintiff. The *prima facie* utterances of his expert were shown by cross-examination to be merely inferences and assumptions (see our brief, p. 147) and Plaintiff never supplied this deficiency with any evidence directed to any period prior to the filing of the Bill, as required by law.

In the case of *Ottumwa v. Christy*, cited on page 131 of opposing brief, the italicized expressions were not in the claims.

Belgian Patent.

This has been quite fully covered in our main brief, but we would call attention to the statement on page 140 of opposing brief that the fact that there is circumferential stretching places this patent in the single stretch class. This is by no means accurate, since there is, of course, circumferential stretching in the double stretch class.

On page 141, it is said that our exhibit Belgian machine is by no means representative of the machine actually disclosed in the Belgian patent. It is noted, however, that Plaintiff's witnesses did not see fit to take exception to the said machine, and that the evidence is that this is the same machine that was before the Court in the *Firestone* case, except that it has been modified in very slight

respects so as to conform to the criticisms made by Plaintiff in that case (Vol. I, pp. 241, 242).

On page 143, and at other places, Plaintiff emphasizes that the professors disagreed as to the translation of the Belgian patent. The sole disagreement was as to whether the word "pucker" or "wrinkle" should be used. We are perfectly satisfied to have the Court use either of these words.

The cut on page 146 is very misleading. Even if two pairs of conical gears were employed in the Belgian patent, they would not only fail to curve the fabric around the core as illustrated in this cut, but they would actually *prevent* it from thus curving around the core, because they are spaced further apart than the width of the core and would, therefore, hold the fabric edges out from the sides of the core, as illustrated in the photograph No. 6 opposite page 110 of our main brief. This photograph is a reproduction of a sworn exhibit. However, this point is settled against Plaintiff because his own expert asserts that there is, in fact, only *one* of these gears shown on each side in the Belgian patent (Vol. I, p. 475) and that such an arrangement could not produce any puckering or plaiting of the fabric (Vol. I, p. 512). Therefore, the machine, as Plaintiff's expert says it should be, could not possibly produce the puckering or the shape shown in cut on page 146 of opposing brief. In order to be comprehensive, Defendant's exhibit of the Belgian machine was made with a pair of gears on each side, and arranged so that the upper gear of each pair could be removed through open bearings, so that the machine could be operated in both ways. These gears are, at any event, trivial attachments and the machine will operate perfectly satisfactorily without them (Vol. I, p. 280, Q. 69).

On page 159, opposing brief says that the Sixth Circuit Court of Appeals could not find anticipation in the Belgian patent, and then gives a quotation from that Court's opinion in which it is held that the Belgian patent is "a complete anticipation" of State in so far as the issues here at bar are concerned.

Its anticipatory effect was, we submit, emphatically recognized by Plaintiff's filing of the Disclaimer promptly after the decision of the Sixth Court of Appeals.

Attention is directed to the *admission* on page 160 of the opposing brief that *the Belgian machine in evidence can be operated according to the State mode of action and with State's results.*

Of the three cases cited at the bottom of page 169 of opposing brief, the first was a five to four decision; the second included three opinions, one dissenting and one doubting; and the third was reversed in 123 F. R. 869, which decision was unanimously affirmed by this Court in 198 U. S. 399.

The Disclaimer.

In order to raise a distinction to meet our argument that what Plaintiff has done by Disclaimer, should have been done by Reissue, if it could have been done at all, Plaintiff says, on page 190 of opposing brief, that a Reissue is applicable "only when the nature of the invention * * * has been altered". This is a very inaccurate legal proposition, because the Statute says in so many words (R. S. Sec. 4916) that the Reissue must be for the "same invention", and this Court has uniformly so held. *Seymour v. Osborne*, 78 U. S. 516; *Ball v. Langles*, 102 U. S. 128; and many other cases.

On page 196, opposing brief suggests a modification which might have been made to a claim in the *Eibel* case, which modification it contends would have been proper by way of Disclaimer. It is most apparent that the suggested modification is in no way comparable to the lengthy and complex interpretation which has been added to the patent by the Disclaimer at bar. Furthermore, without going at length into the matter, it might be suggested that such a Disclaimer would certainly not have been proper, if it had limited the apparatus to use only upon stock containing 70 per cent of water, as the apparatus in the present case is limited to operation upon unshaped fabric; that it would not have been proper if the apparatus had been limited simply to "fast" travel by gravity, as distinguished from some specific or relative speed; and that it would not have been proper if the apparatus had been limited to operating only upon a portion of the stock handled by the elements, as the apparatus in the present case is limited to action only beyond the tread portion. The distinction can be expressed in a few words, to wit: the suggested language for application to the claim in the *Eibel* case merely specifies a result of the apparatus recited; while the Disclaimer in the case at bar limits a specified apparatus to a particular method of operation so that two identical apparatuses could be simultaneously operated side by side and one of them come under the claims while the other did not.

Respectfully,

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